

Message Text

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TAGS: ENRG, GT

SUBJ: NEW GUATEMALAN PETROLEUM LAW PRESENTED TO CONGRESS

REF: A GUATEMALA A-141 B. GUATEMALA A-156 9/13/74

SUMMARY: GOVERNMENT HAS FINALIZED NEW PETROLEUM LAW AND PRESENTED IT TO CONGRESS. CONCESSION SYSTEM REPLACED BY DIRECT CONTRACTS. LAW PERMITS SPLIT OF PROCEEDS FROM OIL DISCOVERED BETWEEN COMPANIES AND GOG OF 49-51, AS AGAINST 30-70 BEFORE; GOVERNMENT SHARE RISES AS PRODUCTION INCREASES. TAX PAYMENTS BY COMPANIES INCLUDED IN SHARE TO GOG. COMPANIES MUST SUPPLY LOCAL DEMAND BUT FREE TO EXPORT EXCESS PRODUCTION. ARE LIMITED TO ONE EXPLORATION AREA, 50 PERCENT OF WHICH MUST BE RETURNED TO GOVERNMENT AT END OF FIVE YEARS; CONTRACTS TO LAST 20 YEARS. LAW GENERALLY FAVORABLE TO FOREIGN-COMPANY INTEREST, WHILE PROTECTIVE OF NATIONAL INTEREST. GOG HAD PREPARED GROUND IN

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CONGRESS FOR NEW LAW AND APPEARS CONFIDENT OF FAIRLY

EARLY PASSAGE.

1. AUGUST 25 GUATEMALAN GOVERNMENT PRESENTED TO CONGRESS NEW DRAFT PETROLEUM LAW - "LEY DE REGIMEN PETROLIFERO DE LA NACION" - TO REPLACE DECREE 62 OF 1974 AND PETROLEUM CODE OF 1955. TEXT OF PROPOSED LAW NOT YET AVAILABLE. ACCORDING TO PRESS REPORTS OF PRESENTATION OF LAW BY MINISTERS OF ECONOMY (PALOMO) AND FINANCE (LAMPART) TO PRESIDENT OF CONGRESS, LEGISLATION HAS FOLLOWING PURPOSES:

A. CORRECTION OF "ERRORS AND LIMITATIONS" OF OLD LAW (SOME 21 IN NUMBER) WHICH HAD DELAYED EXPLORATION AND DEVELOPMENT OF OIL PRODUCTION IN GUATEMALA, NOTWITHSTANDING THE "INTEREST AND NATIONAL URGENCY OF DETERMINING THE EXISTENCE OF OIL IN THE COUNTRY".

B. SUBSTITUTION OF THE PREVIOUS SYSTEM OF CONCESSIONS FOR OIL EXPLORATION BY A SYSTEM OF DIRECT CONTRACTS BETWEEN GOVERNMENT AND OIL COMPANIES. MODEL CONTRACT RECENTLY APPROVED BY GOG.

C. ASSURANCES THAT OIL CONTRACTORS BE SUBJECT TO ALL THE LAWS OF THE COUNTRY RELATING TO DOING BUSINESS HERE AND THAT NO SPECIAL CONCESSIONS BE GIVEN THEM EXCEPT THOSE SPECIFICALLY STIPULATED IN THE CONTRACTS TO BE SIGNED.

D. ESTABLISHMENT OF A REGIME COVERING OIL EXPLORATION, DEVELOPMENT AND PRODUCTION THAT IS "AT ONCE BOTH PATRIOTIC/NATIONALISTIC AND PRACTICAL/APPROPRIATE".

2. MAIN FEATURES OF PROPOSED LAW FOLLOW:

A. UNDER CONTRACTS WITH OIL COMPANIES, GOVERNMENT WILL GET "AT LEAST 51 PERCENT OF TOTAL OIL PRODUCED" AND AN INCREASING SHARE AS VOLUME OF PRODUCTION GOES UP, IN ACCORDANCE WITH A SCALE TO BE ESTABLISHED IN THE CONTRACT.

B. THE REVENUE TO THE GOVERNMENT WILL INCLUDE TAXES LIMITED OFFICIAL USE

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PAID BY CONTRACTOR ON INCOME, DIVIDENDS AND OTHER OPERATIONS IN COUNTRY.

C. PAYMENT OF REVENUE TO GOVERNMENT SHALL BE EITHER IN KIND OR IN CASH, AS DETERMINED BY GOG IN THE CONTRACT SIGNED.

D. CONTRACTOR MUST SELL TO GOVERNMENT OIL REQUIRED IN

COUNTRY; EXCESS IS FOR CONTRACTOR'S EXCLUSIVE DISPOSITION THROUGH EXPORT.

E. NO SINGLE CONTRACTOR IS TO BE AWARDED AN EXPLORATION AREA OF MORE THAN 400,000 HECTARES (ROUGHLY THE SIZE OF EACH OF THE 14 EXPLORATION AREAS ALREADY DRAWN IN PETEN AREA AND SOUTH).

F. DURATION OF CONTRACTS SHALL NOT EXCEED 20 YEARS. IF NO OIL IN COMMERCIAL QUANTITIES DISCOVERED BEFORE END OF SIXTH YEAR, CONTRACTS WILL LAPSE AUTOMATICALLY. IF OIL DISCOVERED, CONTRACTOR MUST SURRENDER UP TO 50 PERCENT OF HIS AREA BY END OF FIFTH YEAR.

G. ONLY COMPANIES WITH SUFFICIENT TECHNICAL AND FINANCIAL CAPABILITIES SHALL BE ALLOWED TO SIGN CONTRACTS. OPERATIONS WILL BE SUPERVISED BY GOVERNMENT THROUGH IN UVIDUAL COMMISSIONS, CONSISTING OF TWO REPRESENTATIVES OF COMPANY AND THREE OF GOG.

H. ON SIGNING CONTRACT, COMPANY MUST PAY GOVERNMENT Q1 MILLION (\$1 MILLION) AND GIVE GUARANTEE TO INVEST AT LEAST Q5 MILLION (\$5 MILLION)

I. CONTRACTOR ALSO MUST MOUNT A TRAINING PROGRAM FOR GUATEMALANS AND INDEMNIFY OWNERS OF LAND WHERE EXPLORATION IS TO TAKE PLACE.

J. FOREIGN OIL COMPANIES ARE TO ADMIT GUATEMALAN INVESTMENT.

K. COMPANIES WILL BE EXONERATED FROM PAYING IMPORT DUTY ON EQUIPMENT REQUIRED, THOUGH MAY BE SUBJECT TO LIMITED OFFICIAL USE

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OTHER TAXES. MUST ABIDE BY LOCAL LAWS IN THIS AND OTHER CONNECTIONS AND "RENOUNCE EXPRESSLY RESORT TO ANY FORM OF DIPLOMATIC CLAIM".

3. COMMENT: LAW ABOUT AS FAVORABLE TO INTEREST OF FOREIGN OIL COMPANIES AS COULD BE EXPECTED. SPLIT OF PROCEEDS FROM OIL PRODUCTION BETWEEN COMPANY AND GOVERNMENT OF 49-51 MUCH MORE LIBERAL THAN PREVIOUSLY PROJECTED (40-60; SEE REF.A) OR THE 30-70 UNDER OLD DECREE. SPLIT EQUIVALENT TO WHAT SHENANDOAH, MAJOR CURRENT EXPLORING COMPANY, HAD OBTAINED, INCLUDING DESIRED PROVISION FOR INCLUSION OF TAX PAYMENTS IN SHARE TO GO TO GOVERNMENT. PAYMZJT IN KIND AS WELL AS CASH ALSO ADVANTAGEOUS TO AMERICAN COMPANIES IN CONTEXT US TAX LAW (REF. B). NO LONGER IS THERE SPECIFIC REQUIRE-

MENT OF 10 PERCENT TO BE OFFERED TO GUATEMALA, AS IN OLD
REGUALTIONS (REF.B). ON OTHER HAND, DURATION OF CON-
TRACT CUT BACK FROM 40 YEARS TO 20 YEARS AND PERIOD BY
END OF WHICH RIGHTS MUST BE RENOUNCED TO 50 PERCENT OF
CONTRACT AREA FROM 6 YEARS TO 5 YEARS.

4. ON BALANCE, NEW LAW SHOULD ACHIEVE GOVERNMENT
OBJECTIVE OF ATTRACTING MORE PROPOSALS TO EXPLORE FROM
LARGE INTERNATIONAL OIL COMPANIES. INDIVIDUAL CONTRACT
NEGOTIATIONS WILL STILL BE DETERMINATIVE. GENERAL
FRAMEWORK PROVIDED BY LAW, HOWEVER, LOOKS GOOD.

5. ACCORDING TO SECRETARY, NATIONAL ECONOMIC COUNCIL,
LAW HAS BEEN FINALIZED FOR SOME TIME. AWARE OF POSSIBLE
POLITICAL OPPOSTION TO IT IN CONGRESS, GOVERNMENT HAS
DELAYED PRESENTATION TILL APPROPRIATE ENVIRONMENT FOR
ITS RECEPTION COULD BE DEVELOPED. GOVERNMENT PRESEN-
TATION HAS BEEN CAREFUL ONE, AND CONGRESS PRESSIDENT
QUOTED AS STATING HE DOES NOT FORESEE DIFFICULTIES IN
PASSAGE OF LAW BY CONGRESS. THIS REMAINS TO BE SEEN.
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